

Hearing Date: June 12, 2019, at 9:30AM (Atlantic Standard Time)  
Response Deadline: May 28, 2019 at 4:00PM (Atlantic Standard Time)

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**NOTICE OF HEARING FOR OBJECTION OF  
PUERTO RICO SALES TAX FINANCING CORPORATION TO  
PROOF OF CLAIM OF SANTANDER SECURITIES LLC (CLAIM NO. 112132)**

**PLEASE TAKE NOTICE** that, on May 10, 2019, the Puerto Rico Sales Tax Financing Corporation (“COFINA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as COFINA’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),<sup>2</sup> filed the *Objection of Puerto Rico Sales Tax Financing Corporation to Proof of Claim of Santander Securities LLC (Claim No. 112132)* (the “Objection”) with the United States District Court for the District of Puerto Rico (the “Court”), seeking to disallow in its entirety Proof of Claim No. 112132 filed by Santander Securities LLC.

<sup>1</sup> The Debtors in these Title III cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

<sup>2</sup> PROMESA is codified at 48 U.S.C. §§ 2101-2241.

**PLEASE TAKE FURTHER NOTICE** that any response to the Objection must be filed in writing with the Court and must be served upon and received by the undersigned counsel for COFINA by **4:00 p.m. (Atlantic Time) on May 28, 2019.**

**PLEASE TAKE FURTHER NOTICE** that, in the event that one or more responses to the Objection are timely filed, the Objection shall be considered by The Honorable Laura Taylor Swain, at the United States District Court for the District of Puerto Rico, 150 Carlos Chardón Street, Federal Building, San Juan, Puerto Rico 00918-1767, at **9:30 a.m. on June 12, 2019.**

**PLEASE TAKE FURTHER NOTICE THAT, IF NO RESPONSES TO THE OBJECTION ARE TIMELY FILED, SERVED, AND RECEIVED, IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.**

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**PLEASE TAKE FURTHER NOTICE** that copies of all documents filed in these Title III Cases are available (a) free of charge by visiting <https://cases.primeclerk.com/puertorico> or by calling +1 (844) 822-9231, and (b) on the Court's website at <http://www.prd.uscourts.gov>, subject to the procedures and fees set forth therein.

Dated: May 10, 2019  
San Juan, Puerto Rico

Respectfully submitted,

/s/ Ricardo Burgos Vargas  
Ricardo Burgos Vargas  
USDC No. 218210  
**A&S LEGAL STUDIO, PSC**  
434 Ave. Hostos  
San Juan, PR 00918  
Tel: (787) 751-6764  
Fax: (787) 763-8260

Martin J. Bienenstock (*pro hac vice*)  
Brian S. Rosen (*pro hac vice*)  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, NY 10036  
Tel: (212) 969-3000  
Fax: (212) 969-2900

*Attorneys for the Financial Oversight and  
Management Board as representative for  
COFINA*

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PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**OBJECTION OF PUERTO RICO SALES TAX FINANCING CORPORATION  
TO PROOF OF CLAIM OF SANTANDER SECURITIES LLC (CLAIM NO. 112132)**

The Puerto Rico Sales Tax Financing Corporation (“COFINA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as COFINA’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),<sup>2</sup> files this objection (the “Objection”) to the claim (Proof of Claim No. 112132) of Santander Securities LLC (“Claimant”), and in support of the Objection, respectfully represents as follows:

<sup>1</sup> The Debtors in these Title III cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

<sup>2</sup> PROMESA is codified at 48 U.S.C. §§ 2101-2241.

## **JURISDICTION**

1. The United States District Court for the District of Puerto Rico has subject matter jurisdiction over this matter pursuant to PROMESA section 306(a).
2. Venue is proper in this district pursuant to PROMESA section 307(a).

## **BACKGROUND**

### **A. The COFINA Title III Case**

3. COFINA is a public corporation and instrumentality of the Commonwealth constituting a corporate and political entity independent and separate from the Commonwealth, created under Act No. 91 of the Legislative Assembly of the Commonwealth.

4. Pursuant to that certain Amended and Restated Sales Tax Revenue Bond Resolution, adopted on July 13, 2007, as amended on June 19, 2009, and pursuant to certain supplemental resolutions, COFINA issued a series of bonds in aggregate approximate amount of \$17 billion, to, among other things, defray certain debt obligations of the Puerto Rico Government Development Bank and the Puerto Rico Public Finance Corporation (the “Bonds”).

5. On May 5, 2017, the Oversight Board, at the request of the Governor, issued a restructuring certification pursuant to PROMESA sections 104(j) and 206 and filed a voluntary petition for relief for COFINA, pursuant to PROMESA section 304(a), commencing a case under Title III thereof (the “COFINA Title III Case”).

6. The Oversight Board filed that certain *Third Amended Title III Plan of Adjustment of the Puerto Rico Sales Tax Financing Corporation* (the “Plan”) [ECF No. 4652]<sup>3</sup> on January 9, 2019, and a related *Disclosure Statement for the Second Amended Title III Plan of Adjustment of the Puerto Rico Sales Tax Financing Corporation* [ECF No. 4364] on November 26, 2018. The

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<sup>3</sup> Unless otherwise stated, all ECF citations refer to documents filed in Bankruptcy Case No. 17 BK 3283-LTS.

Court considered confirmation of the Plan and any objections thereto at a hearing on January 16-17, 2019.

7. On February 4, 2019, the Court confirmed the Plan. *See Order and Judgment Confirming the Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation* [ECF No. 5048]. On February 5, 2019, the Court issued an *Amended Order and Judgment Confirming the Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation* [ECF No. 5055]. The Plan became effective on February 12, 2019, when the transactions contemplated therein were consummated. *See Notice of (A) Entry of Order Confirming the Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation Pursuant to Title III of PROMESA and (B) Occurrence of the Effective Date* [Case No. 17 BK 3284-LTS, ECF No. 587].

#### **B. The Bar Date Orders and COFINA Claims**

8. On January 16, 2018, the Debtors filed their *Motion for Order (A) Establishing Deadlines and Procedures for Filing Proofs of Claim and (B) Approving Form and Manner of Notice Thereof* [ECF No. 2255] (the “Bar Date Motion”). Pursuant to the *Order (A) Establishing Deadlines and Procedures for Filing Proofs of Claims and (B) Approving Form and Manner of Notice Thereof* [ECF No. 2521] (the “Initial Bar Date Order”), the Court granted the relief requested in the Bar Date Motion and established deadlines and procedures for filing proofs of claim in the COFINA Title III Case. Upon the informative motion of certain creditors, and the support of the Debtors, the Court subsequently entered the *Order (A) Extending Deadlines for Filing Proofs of Claim and (B) Approving Form and Manner of Notice Thereof* [ECF No. 3160] (together with the Initial Bar Date Order, the “Bar Date Orders”), extending the deadline to file proofs of claim against one or more Debtors to June 29, 2018 at 4:00 pm (Atlantic Time).

9. Pursuant to the Bar Date Orders, over 165,000 proofs of claim were timely filed against the Debtors and logged by Prime Clerk, LLC. Such proofs of claim totaled approximately \$43.5 trillion in asserted claims against the Debtors.

10. Of the proofs of claim filed, approximately 3,500 were timely filed in relation to COFINA, totaling approximately \$10.1 trillion in asserted claims. As noted above, as COFINA is a special purpose entity with only approximately \$17 billion of funded indebtedness, it was clear that substantially all of such claims were inappropriate.

11. To date, by orders, dated January 31, 2019, February 7, 2019, March 26, 2019, March 27, 2019, and April 2, 2019, and following hearings on January 31, 2019, and March 13, 2019, the Court has granted omnibus and individual objections related to over 3,100 proofs of claim filed against COFINA, resulting in these proofs of claim being disallowed or reclassified to be asserted against another of the Debtors. Additionally, over 350 claims asserted against COFINA have been withdrawn, pursuant to stipulations or notices of withdrawal.

**C. Proof of Claim at Issue**

12. On or about June 28, 2018, Claimant asserted a claim against COFINA for indemnification pursuant to the terms of certain underwriting agreements between Claimant and COFINA, which was logged by Prime Clerk as Proof of Claim No. 112132 (the “Claim”).

**OBJECTION TO PROOF OF CLAIM**

13. This Objection seeks to disallow claims pursuant to 11 U.S.C. § 502(e)(1)(B) a claim for reimbursement or contribution that is contingent. Bankruptcy Code § 502(e)(1)(B) provides that the Court shall disallow any claim “for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that . . . such

claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution . . . .” 11 U.S.C. § 502(e)(1)(B).

14. The Claim asserts “contingent, unliquidated claims against the Debtor . . . for all amounts that are or may be due, chargeable, or reimbursable under the Underwriting Agreements . . .” including indemnification, damages, and reimbursement. *See* Addendum to Proof of Claim, at 2, ¶ 8. The Claim does not provide evidence that any indemnification obligation has actually arisen between COFINA and Claimant, let alone demonstrate the amount of any such indemnification claim. A claim such as this that is “contingent as of the time of allowance or disallowance of such claim or reimbursement” should be disallowed under the Bankruptcy Code, 11 U.S.C. § 502(e)(1)(B). *See also Route 21 Assocs. Of Belleville, Inc. v. MHC, Inc.*, 486 B.R. 75, 97-98 (S.D.N.Y. 2012) (noting that courts routinely “disallow claims for unknown, future costs under section 502(e)(1)(B)” including claims for indemnification); *Aetna Cas. and Surety Co. v. Georgia Tubing Co.*, No. 93-cv-3659, 1995 WL 429018, at \*2 (S.D.N.Y. July 20, 1995) (“Section 502(e)(1)(B) automatically disallows claims . . . seeking reimbursement, indemnity, or contribution that are contingent at the time of the disallowance.”). Because the Claim remains wholly contingent, it should be disallowed in its entirety pursuant to 11 U.S.C. § 502(e)(1)(B).

15. Additionally, to the extent the Claim is allowed, it is subject to subordination pursuant to 11 U.S.C. § 510(b) as a claim “for reimbursement or contribution allowed under section 502” on account of a claim for damages arising from the purchase or sale of a security of the debtor. 11 U.S.C. § 510(b). Because the Claim seeks reimbursement of costs and expenses in connection with a claim arising from the purchase or sale of the Bonds, COFINA requests that the Court enter an order finding that any portion of the Claim that is not disallowed would be subordinated under 11 U.S.C. § 510(b). *See In re Public Serv. Co.*, 129 B.R. 3, 4-5 (Bankr. D.N.H.



1991) (holding that damages claims and defense costs related to litigation involving warrants subject to subordination pursuant to Bankruptcy Code section 510(b)).

### **RESERVATION OF RIGHTS**

16. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of COFINA to object to the Claim or any other claim on any ground whatsoever. COFINA expressly reserves all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any claim against COFINA; (b) a waiver of COFINA's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (e) a waiver of COFINA's rights under PROMESA, the Bankruptcy Code or any other applicable law.

### **NOTICE**

17. COFINA has provided notice of this Objection to (a) the individual creditor subject to this Objection, (b) the U.S. Trustee, and (c) the Master Service List (as defined by the *Order Further Amending Case Management Procedures* [ECF No. 3804]), which is available on the Debtors' case website at <https://cases.primeclerk.com/puertorico>. COFINA submits that, in light of the nature of the relief requested, no other or further notice need be given.

### **NO PRIOR REQUEST**

18. No prior request for the relief sought in this Objection has been made to this or any other court.

WHEREFORE COFINA respectfully requests entry of an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, (1) granting the relief requested herein, and (2) granting COFINA such other and further relief as is just.

Dated: May 10, 2019  
San Juan, Puerto Rico

Respectfully submitted,

/s/ Ricardo Burgos Vargas  
Ricardo Burgos Vargas  
USDC No. 218210  
**A&S LEGAL STUDIO, PSC**  
434 Ave. Hostos  
San Juan, PR 00918  
Tel: (787) 751-6764  
Fax: (787) 763-8260

Martin J. Bienenstock (*pro hac vice*)  
Brian S. Rosen (*pro hac vice*)  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, NY 10036  
Tel: (212) 969-3000  
Fax: (212) 969-2900

*Attorneys for the Financial Oversight and  
Management Board as representative for  
COFINA*

**EXHIBIT A**

**Proposed Order**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**ORDER GRANTING OBJECTION OF PUERTO RICO  
SALES TAX FINANCING CORPORATION TO PROOF OF  
CLAIM OF SANTANDER SECURITIES LLC (CLAIM NO. 112132)**

Upon the *Objection of Puerto Rico Sales Tax Financing Corporation to Proof of Claim of Santander Securities LLC (Proof of Claim No. 112132)* (the “Objection”),<sup>2</sup> dated May 10, 2019, of the Puerto Rico Sales Tax Financing Corporation (“COFINA”), for entry of an order disallowing in its entirety the claim of Santander Securities LLC (Proof of Claim No. 112132) (the “Claim”), as more fully set forth in the Objection; and the Court having jurisdiction to consider the Objection and to grant the relief requested therein pursuant to Section 306(a) of PROMESA; and venue being proper pursuant to Section 307(a) of PROMESA; and due and proper notice of the Objection having been provided to those parties identified therein, and no other or further notice being

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the Objection.

required; and the Court having determined that the relief sought in the Objection is in the best interest of COFINA, its creditors, and all the parties in interest; and the Court having determined that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Objection is GRANTED as set forth herein; and it is further

ORDERED that the Claim is hereby disallowed in its entirety; and it is further

ORDERED that Prime Clerk, LLC, is authorized and directed to delete the Claim from the official claims register in the COFINA Title III Case; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: \_\_\_\_\_

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Honorable Judge Laura Taylor Swain  
United States District Judge